

MORRISON | FOERSTER

425 MARKET STREET
SAN FRANCISCO
CALIFORNIA 94105-2482

TELEPHONE: 415.268.7000
FACSIMILE: 415.268.7522

WWW.MOFO.COM

MORRISON & FOERSTER LLP
NEW YORK, SAN FRANCISCO,
LOS ANGELES, PALO ALTO,
SAN DIEGO, WASHINGTON, D.C.
NORTHERN VIRGINIA,
ORANGE COUNTY, DENVER,
SACRAMENTO, WALNUT CREEK
TOKYO, LONDON, BEIJING,
SHANGHAI, HONG KONG,
SINGAPORE, BRUSSELS

January 10, 2008

Writer's Direct Contact
415.268.7444
PFriedman@mofo.com

RECEIVED
JAN 10 2008
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT,
NORTHERN DISTRICT OF CALIFORNIA

By Hand

The Honorable Joseph C. Spero
United States District Court
Northern District of California
450 Golden Gate Ave.
San Francisco, California 94102

Re: *Heroes Club, Inc. v. United Parcel Service, Inc.*,
Case No. C 07-04422 JCS

Dear Judge Spero:

We are counsel for defendant UPS in the above-referenced action. I write to inform the Court that the parties have negotiated a settlement of this case. This letter is submitted with the consent and concurrence of plaintiff's counsel.

The complaint in this action alleged that UPS charged plaintiff and other putative class members an additional fee to obtain a signature on delivery of their packages and failed to provide the service in all instances and failed to refund the charges. On November 9, 2007, UPS filed a motion for judgment on the pleadings, seeking dismissal with prejudice of the action, primarily based on federal preemption. Plaintiff filed its opposition to that motion on November 30, 2007. UPS has not yet filed its reply papers, which are due on or before January 11, 2008. The motion is scheduled to be heard on February 8, 2007. Given the parties' agreement to settle this case, UPS hereby withdraws its motion for judgment on the pleadings, without prejudice as to completing the briefing and hearing on the motion if the case is not dismissed in its entirety.

Plaintiff has concluded that it no longer wishes to pursue this action, and the parties have now negotiated a settlement of plaintiff's individual claims. The settlement would *only* resolve Heroes Club, Inc.'s claims against UPS, and dismissal of the action would be without prejudice to claims, if any, of unnamed putative class members. Because of this, plaintiff's counsel believes that an individual settlement would not prejudice the rights of putative class members in any way. Accordingly, plaintiff's counsel believes (and we concur) that the most appropriate course of action is to conclude a settlement on an individual basis and dismiss the action.

MORRISON | FOERSTER

The Honorable Joseph C. Spero
January 10, 2008
Page Two

Plaintiff has not moved for class certification in this case, and no decision has been rendered as to the suitability of certification for plaintiff's claims. As a result, under Rule 23(e)(1)(A) of the Federal Rules of Civil Procedure, court approval is not required for settlement of plaintiff's individual claims against UPS. *See* Advisory Committee Comment, 2003 Amendments to Rule 23, Subdivision (e) ("The new rule requires approval *only if the claims . . . of a certified class are resolved* by a settlement, voluntary dismissal, or compromise." (Emphasis added)). Thus, under the federal rules, the parties may dismiss this action by stipulation and without Court order pursuant to Fed. R. Civ. P. 41(a)(1).

Nonetheless, if the Court wishes to satisfy itself as to the fairness of the proposed individual settlement between plaintiff and the defendant, the parties are prepared to disclose the terms of the settlement to the Court. Because those terms were negotiated in light of plaintiff's particular circumstances and the history of dealings between plaintiff and UPS, all parties respectfully request that, if the Court wishes the parties to disclose the terms of the proposed settlement, such disclosure be made *in camera* and not be entered into the public file for this case.

The parties will proceed to file a stipulation dismissing this action in its entirety, with prejudice as to all of plaintiff's individual claims but without prejudice as to the potential claims of any putative class members.

Thank you very much.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Paul T. Friedman", with a stylized, flowing script.

Paul T. Friedman

cc: Mark Johnson, Counsel for Plaintiff Heroes Club, Inc.